



February 17, 2011

**(VIA EMAIL)**

Rebecca Foster  
U.S. Environmental Protection Agency  
P.O. Box 1198  
Ada, Oklahoma 74821

**RE: Additional Peer Review Process Comments**

Dear Ms. Foster:

Encana Oil & Gas (USA) Inc. (Encana) is pleased that the United States Environmental Protection Agency (EPA) has determined to conduct a formal peer review process on the draft report entitled "Investigation of Ground Water Contamination near Pavillion, Wyoming." We believe that the peer review process, if properly conducted, should ensure independent, scientific evaluation and careful scrutiny of the preliminary conclusions reached in the draft report. This report, albeit submitted as preliminary and in draft form, makes serious allegations and conclusions that impact not only Encana, but the entire domestic energy industry.<sup>1</sup> Although we sincerely appreciate the opportunity to provide comments—and we acknowledge efforts on behalf of EPA to provide a more transparent process related to this critical issue—we remain concerned that the current parameters of the peer review process do not adequately ensure a sufficiently unbiased, thorough and critical review of the scientific underpinnings and conclusions of the draft report.

First, the EPA has categorized the draft report as "Influential Scientific Information." For the reasons set forth in Encana's letter to Administrator Jackson dated January 10, 2012, which letter is attached to this email and incorporated into these comments, the draft report should be categorized as a "Highly Influential Scientific Assessment" (HISA) under criteria established by the Office of Management and Budget (OMB) Bulletin and EPA Peer Review Handbook. Our January 10, 2012 letter addresses

<sup>1</sup> Among other matters, we are concerned that EPA has advised, in a letter dated February 16, 2012, that it could take up to 6 months to make public the key information relating to its draft report.

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several aspects of the HISA categorization (and why it is appropriate in this case), including the uncontroverted fact that the draft report is “novel, controversial, or precedent-setting or has significant interagency interest.” Significant interagency interest exists in Wyoming, and the EPA released the draft report at a time when multiple efforts are underway by various state, local and federal agencies (including the United States Department of the Interior, Bureau of Land Management) to regulate hydraulic fracturing. The level of public attention focused on the draft report has already illustrated the significance of the draft report to the energy industry, state and local governments, the Northern Arapaho Tribe and the Eastern Shoshone Tribe, and the public discourse relating to hydraulic fracturing. Further, we believe that the preliminary conclusions reached in the draft report will result in an economic impact of more than \$500,000,000 per year to the energy industry and the American economy. Next, we understand that EPA has asserted that the draft report cannot be categorized as a HISA because it does not directly relate to the establishment of regulation. This assertion, in our view, is incorrect. According to the EPA Peer Review Handbook, examples of assessments that could be considered to be highly influential assessments include “weight of evidence analyses” (section 2.2.4 of EPA Peer Review Handbook). The most important conclusions reached in the draft report rely on “lines of evidence”; these conclusions are far-reaching and are already having an impact on local, state and federal regulations and policy. In summary, the draft report contains the requisite elements to be considered a “Highly Influential Scientific Assessment.”

Second, because of the importance of this study, EPA should adhere to all applicable HISA-level peer review requirements, including the following: (i) require compliance with stringent conflict of interest requirements that would preclude any EPA employee from participating as a peer reviewer; (ii) provide the peer review panel with sufficient information to conduct a thorough and scientific peer review, including background information relating to key studies or models, to enable the panel to understand the data, analytic procedures, and assumptions used to support the key findings or conclusions in the draft report; and (iii) prepare a written response to the peer review report explaining EPA’s agreement or disagreement with the views expressed in the report, the actions EPA has undertaken or will undertake in response to the report, and the reasons EPA believes those actions satisfy the key concerns stated in the report (if applicable). Without these additional three components and the formal recognition that the draft report is a HISA, the peer review process will not follow EPA’s own Peer Review Handbook.

Third, the Peer Review Plan should be revised to include, as critical, three additional specialized areas of expertise:

- microbiology – critical to evaluation of residents’ palatability complaints;
- analytical chemistry – critical to evaluation of the reliability of EPA’s data to support the conclusions reached; and
- monitoring well engineering – critical to evaluation of questions regarding the construction and development of EPA’s deep wells.



Given the nature of the draft report, these areas of expertise are essential to an effective and quality peer review.

Fourth, the Federal Register notice states that the selected peer reviewers will participate in a “one- to two- day peer review meeting”. We wish to confirm and emphasize that the peer reviewers need and must have sufficient time to prepare for the panel meeting(s) and to complete their work carefully and thoughtfully before any deadline for the panel report. We also wish to confirm our understanding that the peer review meeting will provide the public with the opportunity to present technical/scientific comments directly to the panel, in addition to the reviewers’ receiving copies of technical/scientific comments submitted in writing by the public comment deadline (presently March 12, 2012).

Fifth, it has been noted through meetings between Encana and Region 8 and apparently also in conversations with the State of Wyoming that EPA is concerned about the application of the Federal Advisory Committee Act (FACA). Specifically, we have been told that EPA considers FACA a barrier to designating the draft report HISA. However, neither the OMB Bulletin nor the EPA Peer Review Handbook identify FACA as an obstacle or even a consideration in making an HISA determination. Additionally, EPA stated that creation of a single report from the peer review panel will trigger FACA. This statement is not correct. According to the Federal Register and the Peer Review Plan for the draft report, EPA has hired ERG to organize and conduct the external peer review. FACA does not apply to peer reviews that EPA does not run, establish, control, or manage. As long as EPA refrains from such conduct and ensures that it does not interfere with ERG’s establishing, controlling, and managing the peer review, FACA is not triggered and FACA does not and will not apply to this peer review. As a result, there is no FACA obstacle to a panel report and such a report must, of course, be produced by the panel, including both comments on which the panel reaches agreement and those comments that individual reviewers may have. Because of the importance of this issue, Encana must state for the record that any interference or control by EPA of ERG’s peer review process would violate the spirit and intent of the peer review process.

As a final matter, according to the “Acknowledgements” in the draft report, EPA had three individuals external to EPA review the draft report before its release and EPA found their comments “valuable” in “improving” the draft report. Because of these three individuals’ work in the development of the draft report, none of them may be appointed to the peer review panel. The EPA Peer Review Handbook prohibits appointing individuals who were involved in producing the draft report from serving as panel members.

We appreciate the opportunity to make these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Stewart', with a horizontal line drawn through the middle of the name.

David Stewart  
Team Lead EHS, North Rockies

Attachment

cc: James Martin – EPA Region 8 Administrator

cc: [peerreview@erg.com](mailto:peerreview@erg.com)